

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 3. GAMBLING CONTROL
CHAPTER 1. THE BUREAU OF GAMBLING CONTROL**

NOTICE OF PROPOSED RULEMAKING

Notice published on February 14, 2025

The Department of Justice (Department) proposes to amend section 2010, and to adopt sections 2073, 2074, and 2075 of Title 11, Division 3, Chapter 1, Article 7 of the California Code of Regulations concerning the play and approval of blackjack-style games.

PUBLIC HEARING

The Department, by and through the Bureau of Gambling Control (Bureau), will hold a virtual public hearing to provide all interested persons with an opportunity to present statements or comments, either orally or in writing, with respect to the proposed regulation as follows:

Date: April 4, 2025

Time: 9:00 a.m.

To join by videoconference:

ZoomGov Link: <https://doj-ca.zoomgov.com/j/1619066288>

Meeting ID: 161 906 6288

To join by teleconference:

Dial: (669) 254-5252

Meeting ID: 161 906 6288

The Department requests, but does not require, that persons who make oral comments at a hearing also submit a written copy of their testimony made at the hearing to BGC_Regulations@doj.ca.gov.

WRITTEN COMMENT PERIOD

Any interested party, or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on April 2, 2025, at 5:00 p.m. The Department will only consider comments received by that time. Please submit written comments to:

A. McMillen, Regulations Coordinator
California Department of Justice, Bureau of Gambling Control
2450 Del Paso Road, Suite 100, Sacramento, CA 95834
Telephone: (916) 261-4256, Email: BGC_Regulations@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the rulemaking record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Business and Professions Code section 19826.

Reference: Business and Professions Code sections 19801, 19826, 19866; Penal Code section 330; *People v. Gosset* (1892) 93 Cal. 641.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Summary of Existing Laws:

The Gambling Control Act

The California Department of Justice (Department), is charged with the investigation and enforcement of controlled gambling activities in California as set forth in the Gambling Control Act (Act), codified at Business and Professions Code section 19800, et seq. (Gov. Code, § 15001.1.) The Department’s Bureau of Gambling Control (Bureau) carries out those investigative and enforcement activities. (See Gov. Code, § 15002.5.) In enacting this measure, the Legislature declared that “[u]nregulated gambling enterprises are inimical to the public health, safety, welfare, and good order.” (Bus. & Prof. Code, § 19801, subds.(a), (d).) The purpose of the Act is not to expand opportunities for gambling, or to create any right to operate a gambling enterprise, or to have a financial interest in any gambling enterprise, but rather to regulate businesses that offer otherwise lawful forms of gambling games. (*Id.*, § 19801, subd. (f).)

The Act also provides that public trust requires comprehensive measures be enacted to ensure that permissible gambling will not endanger public health, safety or welfare, it is free from criminal and corruptive elements, and it is conducted honestly and competitively. (Bus. & Prof. Code, § 19801, subd. (g).) The Legislature also declared that “[p]ublic trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments . . .” (*Id.*, § 19801, subd. (h).) The Act “is an exercise of the police power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes.” (*Id.*, § 19971.)

Under the Act, the Department has the exclusive authority and responsibility to “[a]pprove the play of any controlled game,¹ including placing restrictions and limitations on how a controlled

¹ A “controlled game” is defined as “any poker or Pai Gow game, and any other game played with cards or tiles, or both, and approved by the Department of Justice, and any game of chance, including any gambling device, played for currency, check, credit, or any other thing of value that is not prohibited and made unlawful by statute or local ordinance.” (Pen. Code, § 337j, subd. (e)(1).)

game may be played.” (Bus. & Prof. Code, §§ 19826, subd. (g), 19943.5.) The Department is directed to “adopt regulations reasonably related to its functions and duties as specified in [the Act].” (*Id.*, § 19826, subd. (f).)

Blackjack is a Game of Twenty-One, and is Prohibited

The California Constitution² and Penal Code section 330 prohibit the play of specifically enumerated games, among them “*any* game of . . . twenty-one” (Emphasis added.)

Twenty-one is, and historically has been, known by a variety of names. At the time that twenty-one was added to the list of games prohibited by Penal Code section 330, a number of variations of twenty-one had been recognized. (Scarne, *Scarne’s New Complete Guide to Gambling* (Simon & Schuster (1974), p. 350, hereafter “Scarne.”). Additionally, the game of “blackjack” has been referred to interchangeably with the game of “twenty-one” for decades in general parlance, in other jurisdictions, numerous California and federal judicial decisions, and under the federal Indian Gaming Regulatory Act.

Game Rules are Reviewed and Approved by the Bureau

A controlled game may not be offered for play unless the Bureau has approved the game rules. (*Ibid*; Cal. Code Regs., tit. 11, § 2038; see also Pen. Code, § 337j, subd. (e)(1).) To obtain approval, applicants must submit an Application for Game Review (BGC-APP.026 (Rev. 09/2017)) to the Bureau, along with the payment of an application fee and a deposit. (Cal. Code Regs., tit. 11, §§ 2037, subd. (a)(1)(K), 2038.)

There are currently no regulations governing the approval of blackjack-style games and permissible variations. Accordingly, the Department submits these proposed regulations to provide clarity and guidance to the public and the regulated industry regarding permissible game rules in blackjack-style games.

Effect of Proposed Rulemaking:

The proposed regulations would clarify and make specific the limitations imposed upon a blackjack-style game. These proposed regulations provide specific guidance regarding: (1) Blackjack game rules that are prohibited, including specified variations that do not sufficiently differentiate a game from the prohibited form of Blackjack; (2) the specified rule variations that must be included in a blackjack-style game such that the game may be approved by the Bureau; and (3) the procedure for the Bureau to review a previously-approved blackjack-style game for compliance with the new restrictions, including the procedure for the Bureau to disapprove a game that does not comply with the regulations. The proposed amendments to section 2010 would add definitions that are used in proposed sections 2073 and 2074.

² California Constitution, article IV, section 19, subdivision (e) requires the state to prohibit casinos that are the type currently operating in Nevada and New Jersey. This provision “was intended, in part, to constitutionalize Penal Code section 330.” (*Hotel Employees and Restaurant Employees Inter. Union v. Davis* (1999) 21 Cal.4th 585, 609 fn. 5.)

Rules of the Prohibited Form of Blackjack

The proposed regulation would establish the rules that comprise the prohibited form of Blackjack, including impermissible non-substantive variations that are intended to give the appearance of differentiating a game from the prohibited form. The proposed regulation would set forth: (1) the manner of placing wagers; (2) a description of the card deck or decks used, and the points assigned to each card; (3) the actions a player may take when it is their turn to act; and (4) the manner or determining whether a player will win, lose, or tie against the player-dealer. The proposed regulation would also specify what modifications to the above-described rules will not differentiate a game from the prohibited form of Blackjack. These include (1) changes to a standard deck by the addition or removal of cards, or marking specified cards with words, symbols, or other alterations that operate to change the point value of the card only on the initial deal, (2) assigning a point value to specified cards marked with words, symbols, or other alterations that is operative only on the initial deal, (3) a rule permitting a player who loses by exceeding the target point count to still have an opportunity to win or tie if the player-dealer also exceeds the target point count, (4) a rule that establishes a target point count that is a number other than 21, but that is effectively operative only on the initial deal and that is impossible to obtain thereafter, (5) changes to the number of cards dealt on the initial deal, and (6) changes to the actions that a player may take when it is their turn. The proposed regulation would specify that a game will be considered a prohibited form of Blackjack if the game includes any variation of the number “21” or the word “blackjack” in its name.

Permissible Blackjack Variations

The proposed regulations would provide for rules required to be included in a blackjack-style game, referred to as “permissible blackjack variations.” This proposed regulation would apply to a game that includes the rules specified in proposed section 2073, and any modification to the rules as described in proposed section 2073. A game with permissible blackjack variations may be approved by the Bureau if they include the following rules: (1) whether a player wins, loses, or ties will be determined by whether the player is closer to the target point count than the player-dealer; (2) the target point count shall not be 21, or any number greater than 20 or less than 22, (3) the target point count shall be the same on the initial deal as it is throughout the play of the game; and (4) when a player ties with the player-dealer, the player shall win. Eligible games may not have a “bust” rule, as described in section 2073, and shall not provide that a hand consisting of an ace and a 10-point card automatically wins.

Review of Blackjack Games

The proposed regulations would establish a procedure for reviewing currently approved or pending blackjack-style games for compliance with the proposed regulations. Within 60 days of the effective date of the regulations, a gambling enterprise may submit a request for review of a currently approved game, or seek modification of a currently approved game, to ensure that the game is compliant with these regulations. The Bureau thereafter shall have 90 days to approve or disapprove a game or modification of a game. Pending games shall be modified to comply with the regulations if the game is not compliant when these regulations become effective. Previously approved games with names that contain “21” or “blackjack” shall be modified no later than one

year after the effective date of the regulations. If no request for review of a blackjack game is received within 60 days of the effective date of the regulations, and the game is not compliant with these regulations, the game will be disapproved. The disapproval may be appealed as specified.

The proposed regulations would waive the fees normally required for the modification of a game for purposes of complying with these regulations. This fee waiver shall only apply to requests to modify a game that is filed with the Bureau within 60 days of the effective date of the regulations.

Anticipated Benefits of the Proposed Regulations:

The California Legislature, in its legislative findings, declared that the purpose of the Act is to regulate businesses that offer otherwise lawful forms of gambling games, to enact comprehensive measures to ensure that gambling is free from criminal and corruptive elements, and to provide for the strict and comprehensive regulation of all activities related to the operation of lawful gambling establishments. (Bus. & Prof. Code, § 19801, subds. (f), (g), (h).)

Penal Code section 330 prohibits the play of *any* game of twenty-one; blackjack, as discussed above, is a game of twenty-one. The Act furthers this prohibition by allowing only the play of lawful gambling games in California gambling establishments. The Act further enables the Department to prevent the play of prohibited games in gambling establishments through the game approval process by placing restrictions and limitations on how a controlled game may be played.

The proposed regulations would further the policies set forth in the Act, as well as the Legislature's determination that any game of twenty-one is illegal, by providing the public and the regulated industries with (1) clear guidance on the rules of twenty-one or blackjack, as prohibited, (2) clear guidance on what game rules will be required in order for a game to be deemed a permissible blackjack variation, and thus a game that may be approved by the Department, and (3) a procedure by which the regulated industry may seek to modify a previously approved game or pending game in order to conform the game rules to the requirements of these proposed regulations. These regulations would thus ensure that controlled games are not played in a manner that contravene state law.

The regulations will benefit the health, safety and welfare of the public and the regulated industries because they will ensure that the public does not engage in, and the regulated industries do not offer, gambling games that are prohibited by Penal Code section 330 and the State Constitution. The regulations will also benefit the regulated industry by providing clear guidance and transparency on the rules that must be included in a blackjack-style game with permissible variations for that game to be approved. The proposed regulations will also provide some cost savings to the regulated industry in the form of a fee waiver to assist in their compliance with the proposed regulations. The proposed regulations will establish an appeal procedure for disapproved games, lending transparency to the process. These regulations will also benefit the Department in its review of games by describing specific rule requirements that will be easily verifiable by Department staff.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to the proposed regulation.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined these proposed regulations are not inconsistent or incompatible with any existing state regulations, because there are no existing regulations that address the specific subject matter of the proposed regulations.

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following Initial Determinations:

Mandate on local agencies and school districts: The proposed regulations do not impose a mandate on local agencies or school districts.

Cost or savings to any state agency: The proposed regulations may result in a loss of revenue to the Department arising from new parameters governing blackjack-style games with permissible variations.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: The proposed regulations may result in a loss of tax revenue to local governments that benefit from cardroom gaming activity. Local tax revenues from gaming may be disproportionately important to communities hosting cardroom activities. Cardrooms tend to be concentrated in major metropolitan jurisdictions. But gaming revenue and the attendant local tax revenue are of special significance in many lower income counties too.

Cost or Savings in Federal Funding to the State: None.

Significant Effect on Housing Costs: None.

Significant, statewide adverse economic impact directly affecting businesses:

The Department has made an initial determination that the adoption and amendment of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action will affect all cardrooms (or card clubs) in California. Currently 86 licensed cardrooms are located throughout the state. The proposed action will affect all third-party businesses supporting cardroom gaming in the state (known as third-party providers of proposition player services or TPPPS). Currently 36 TPPPS are licensed to operate in the state.

The proposed action will require cardrooms and TPPPS to work within the limitations imposed upon a blackjack-style game. These proposed regulations provide specific guidance regarding: (1) Blackjack game rules that are prohibited, including specified variations that do not sufficiently differentiate a game from the prohibited form of Blackjack; and (2) the specified rule variations that must be included in a blackjack-style game such that the game may be approved by the Bureau.

The proposed action may indirectly affect a variety of associated attractions or appurtenant services including restaurants, bar, and hotels.

The Department has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Under Government Code section 11346.5, subdivision (a)(7), submissions of proposed alternatives to a proposed regulatory action may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- Consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

Cost impacts on representative person or business:

The Department estimates that: (1) the compliance costs associated with the regulations could lead to the elimination of all blackjack revenue from cardrooms; (2) 50 percent of lost revenue may be replaced with revenue from new games; and (3) 25 percent of customers may switch patronage from cardrooms to tribal casinos to play traditional Blackjack. This could represent a \$68 million loss of revenues to cardrooms and a \$34 million increase in revenues to tribal casinos.

RESULTS OF THE STANDARDIZED REGULATORY IMPACT ANALYSIS (SRIA):

Cardrooms would be directly affected by the proposed regulations. In 2023, existing Blackjack games in California cardrooms produced an estimated \$136 million in revenue. The Department

estimates that cardrooms would lose \$68 million in revenue under the proposed regulation, while tribal casinos will gain \$34 million.

Creation or Elimination of Jobs in California

The Department estimates the proposed regulations will result in 53 fewer jobs within the cardroom industry per year over the period of 2026-2035.

Creation or Elimination of Businesses in California

The Department has determined that this regulatory proposal will likely not have a significant impact on existing businesses or the expansion of businesses in California.

Competitive Advantages or Disadvantages for Existing Businesses in California, including the ability of California businesses to compete with businesses in other states

The Department does not have reliable estimates regarding the individual competitiveness of cardrooms in light of the proposed regulations. However, a cardroom's compliance costs associated with the proposed regulations likely puts them at some competitive disadvantage relative to tribal casinos.

With respect to out-of-state competition, the Department does not have reliable estimates regarding a gambling migration as a result of the proposed regulation. The new restrictions will likely impact cardrooms individual competitiveness against out-of-state competitors that offer traditional Blackjack, diverting some gaming revenue across California's border to Nevada or other neighboring jurisdictions. Higher costs for patrons to reach more remote Blackjack opportunities, however, may slightly diminish sector competitiveness.

Increase or Decrease in Investment in California

The Department estimates that the impact on state investment is relatively small. However, cardroom gaming restrictions will have more direct impacts on investment by the regulated sector. Lower revenue and compliance requirements may discourage investment by some cardroom investors. For other cardroom investors, the new restrictions may generate incentives to innovate new games or blackjack variations to retain patrons. Therefore, it is reasonable to expect incumbent firms to invest in new games and product differentiation to offset any loss of business arising from the proposed regulations.

Benefits of the Regulations

The regulations will benefit the health, safety and welfare of the public and the regulated industries because they will provide a clear set of rules for blackjack-style games in California cardrooms. This will ensure that the public does not engage in, and the regulated industries do not offer, gambling games that are prohibited by Penal Code section 330. The regulations will also benefit the regulated industry by providing clear guidance and transparency on the rules that must be included in a blackjack-style game with permissible variations for that game to be

approved. The proposed regulations will also provide cost savings to the regulated industry in the form of fee waivers to assist in their compliance with the proposed regulations. The proposed regulations will establish an appeal procedure for disapproved games, lending transparency to the process. These regulations will also benefit the Department in its review of games by describing specific game rule requirements that will be easily verifiable by Department staff.

Incentives for Innovation in Products, Materials, or Processes

Substantive industry regulations can induce innovation. When existing practices are subject to new restrictions, it is reasonable to expect affected businesses to invest in product differentiation to offset any loss of business. In the case of blackjack-style games, cardrooms may invent new games or variations to retain patrons. Innovation processes are inherently subject to uncertainty, and it is not realistic to predict the advent of transformative technologies or products in the industry.

SUMMARY OF DEPARTMENT OF FINANCE'S COMMENTS ON SRIA AND RESPONSE:

The Department of Finance (DOF) generally concurs with the methodology applied in the SRIA, but raised three main points of disagreement that: (1) the SRIA should clearly identify the regulatory baseline used to analyze the change in behavior as a result of the proposed regulations in order to augment the analysis of the impacts to local governments; (2) the proposed regulatory alternatives should then be compared to the defined baseline and include quantified cost impacts; and (3) the SRIA must provide the rationale for any underlying assumptions that are material to the analysis. In response to these comments, the Department revised the SRIA to include an updated analysis of the regulatory baseline to augment the impact on local governments and outline the direct costs of alternative regulatory scenarios. Additionally, the Department noted the lack of data on industry adjustments to gaming rules changes, which limits the ability to support underlying assumptions that are material to the analysis. In the absence of such data, the Department assumptions are intended to be indicative of change in behavior as a result of the proposed regulations. The revised SRIA is included in the regulatory package as Appendix D to the Initial Statement of Reasons.

SMALL BUSINESS DETERMINATION: The Department has determined that the proposed action affects small businesses.

CONSIDERATION OF ALTERNATIVES

Government Code section 11346.5, subdivision (a)(13) requires that the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Department has determined that the proposed action is the most effective way to enforce the prohibition against traditional Blackjack games and the regulation of permissible blackjack-style games in California.

The Department invites interested persons to submit alternatives with respect to the proposed regulations at either the public hearing or during the written comment period.

Alternatives to the proposed regulation that the Department itself considered are described in the SRIA and Initial Statement of Reasons.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

A. McMillen, Regulations Coordinator
California Department of Justice, Bureau of Gambling Control
2450 Del Paso Road, Suite 100, Sacramento, CA 95834
Telephone: (916) 261-4256; Email: BGC_Regulations@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

L. Terry, Crime Analyst II
California Department of Justice, Bureau of Gambling Control
2450 Del Paso Road, Suite 100, Sacramento, CA 95834
Telephone: (916) 830-9051; Email: BGC_Regulations@doj.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS, PROPOSED TEXT, RELATED FORMS, AND RULEMAKING FILE

The Department will make the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the text of proposed regulations, the initial statement of reasons, the economic and fiscal impact statement (STD 399) and addendum, and any information upon which the proposed rulemaking is based, which are available on the Department's website at www.oag.ca.gov/gambling/regulations. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Department will either adopt these regulations substantially as described in this notice or make modification based on the comments. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the proposed regulations as revised. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the final statement of reasons will be available on the Department's website at www.oag.ca.gov/gambling/regulations. Please refer to the contact information included above to obtain a copy of the final statement of reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice, the initial statement of reasons, the text of the proposed regulations, and any information upon which the proposed rulemaking is based will be posted and available for downloading on the Department's website at: www.oag.ca.gov/gambling/regulations.